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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/527,584	03/17/2000	Peter J. Ashwood Smith	9-13528-94US	2892
20988	7590	10/06/2005	EXAMINER	
OGILVY RENAULT LLP 1981 MCGILL COLLEGE AVENUE SUITE 1600 MONTREAL, QC H3A2Y3 CANADA			ZIA, SYED	
			ART UNIT	PAPER NUMBER
			2131	
DATE MAILED: 10/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

09/527,584

**Applicant(s)**

ASHWOOD SMITH, PETER J.

**Examiner**

Syed Zia

**Art Unit**

2131

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b)  They raise the issue of new matter (see NOTE below);  
 (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Attachment. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-30.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Attachment.  
 12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
 13.  Other: \_\_\_\_\_.



***Attachment to Advisory Action******Response to Amendment***

This office action is in response to after-final request for reconsideration and argument filed on September 06, 2005. Original application contained Claims 1-28. Applicant previously amended Claims 1, 12, 15, 26, and added Claims 29-30. Applicant's request for consideration has been fully considered but they are not persuasive because of the following reasons:

Applicant amended independent claims. These amendments require further consideration because either scope of the claims has been changed when interpreting existing claim limitation in conjunction with amended limitation, or amendment does not place the application in condition for allowance, some examples are:

Claim 1 limitation b line 6) "dynamically adjusting a respective traffic metric to be used for routing connectionless traffic based... the connection oriented traffic."

Claim 13 limitation b line 7) "means for dynamically adjusting a respective traffic metric to be used for routing connectionless traffic based... the connection oriented traffic."

Claim 13 limitation c line 10) "means for routing the connectionless traffic ... shared network element based on the adjusted traffic metric"

Claim 29 limitation c line 12) "routing the connectionless traffic ... adjusted traffic metric"

Claim 30 limitation c line 12) " means for routing the connectionless traffic ... adjusted traffic metric"

### **Response to Arguments**

Applicant's arguments filed on September 06, 2005 have been fully considered but they are not persuasive because of the following reasons:

Regarding Claims 1, 15, 29, and 30 applicants argued that the cited prior art [Hsu] (U. S. patent 6,363,319) does not teach both, " a) *the determination of cost metric to be used for routing connectionless traffic*" and b) *dynamically adjusting a respective connectionless traffic metric based on the determined resource requirement of the connection-oriented traffic*".

This is not found persuasive. Cited prior art teaches a system and method for selecting a route for a flow from a number of network paths connecting a source to a destination, that involves: determining cumulative costs for a number of candidate paths from the computer network paths using a cost bias which is dynamically calculated based on at least one of a flow attribute and a path attribute; and selecting an optimal path, corresponding to the selected route, having a minimum of the cumulative costs. Cited prior art provides simple and efficient selection of routes in a system of computer networks. Increases traffic efficiency by taking into account bandwidth and the traffic requirements in route selection by selecting an optimal path corresponding to the selected route and having a minimum of the cumulative costs, and a route selection system (col.6 line 11 t col.8 line 35).

As a result, cited prior art does implement and teaches a system and method of efficient, and dynamic allocation of shared network resources between connection-oriented and connectionless traffic in a communication network.

Applicants still have failed to explicitly identify specific claim limitations, which would define a patentable distinction over prior arts.

Therefore, the examiner asserts that Cited prior art does teach or suggest the subject matter broadly recited in independent and dependent claims. Accordingly, rejections for Claims 1-30 are respectfully maintained.



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